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Christopher T. Giovinazzo

From: Paul Rice [price@civlit.com]
Sent: Thursday, September 27, 2007 8:58 PM
To: Christopher T. Giovinazzo
Subject: Your letter of 9/19/2007

Chris: Thank you for your letter of September 19, 2007. We obviously disagree. B & O contends that H.D. had an obligation to promptly mediate the issue of whether it even had a right to terminate, given the 75% volume commitment referenced in Exhibit A-1, which controls in the event of a discrepancy between it and the EBA. B & O contends that H.D.'s refusal to mediate this issue was a violation of its obligation under EBA Section 17.0 to mediate a "dispute arising under or in connection with" the EBA, and also a waiver of any right to insist upon mediation as a condition precedent to the institution of litigation.

In any case, now that more than 60 days has passed since the notice of termination, as B & O has fully and promptly provided H.D. with the audit rights H.D. has asserted pursuant to EBA Section 27.0, and without waiving B & O's claim of waiver, there is no obstacle that I am aware of to mediating all issues arising out of the April 1, 2006 EBA prior to the hearing on your Motion.

Obviously, B & O rejects your claim that the prior offers to mediate were but attempts to moot any alleged defects in the 2nd Amended Complaint. I assure you that B & O will mediate with a "genuine intention of resolving the parties' disagreement".

Your proposal, as referenced in the penultimate paragraph of your letter, is rejected. Please ask your client whether it is willing to reconsider its refusal to mediate.

Regards,

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